

EXHIBIT 2

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

NICHOLAS L. ABBOTT, *et al.*

Application No.: 10/044,899

Filed: January 9, 2002

For: OPTICAL AMPLIFICATION OF
MOLECULAR INTERACTIONS USING
LIQUID CRYSTALS

Customer No.: 43850

Confirmation Number: 3817

Examiner: Lundgren, Jeffrey S.

Technology Center/Art Unit: 1639

Attorney Docket: 061818-5002-US04

**STATEMENT OF FACTS CONCERNING
THE PASSING OF RAHUL SHAH**

Mail Stop AF

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In late February, 2009, Applicants prepared and sent a new declaration for the instant application to Nicholas L. Abbott, Justin J. Skaife, Vinay K. Gupta, Timothy B. Dubrovsky, and Rahul Shah, referred to as Exhibit 1 in the accompanying Advisory Action Response (“Exhibit 1”). Applicants received executed declarations for all inventors except Rahul Shah. After diligent effort for three weeks to contact Rahul Shah, Applicants learned that he had been hospitalized during that time and that he passed away on March 19, 2009. Please find the attached for your reference:

Exhibit 2A: Copy of email correspondence from Jennifer C. Black, paralegal for Morgan, Lewis & Bockius LLP, to Vinay S. Gupta and Rahul Shah requesting the execution and return of the Declaration.

Exhibit 2B: Copy of email correspondence from Jennifer C. Black to Nicholas L. Abbott requesting assistance in contacting Rahul Shah.

Exhibit 2C: Copy of email from Nicholas L. Abbott to Jennifer C. Black reporting Rahul Shah’s hospitalization and passing.

REMARKS

On February 27, 2009, Jennifer C. Black, paralegal for Morgan, Lewis & Bockius LLP, sent an email to Vinay S. Gupta and Rahul Shah requesting execution and return of the attached Declaration before March 10, 2009 (Exhibit 2A).

On March 18, 2009, Jennifer C. Black sent an email to Nicholas L. Abbott requesting assistance in contacting Rahul Shah as all efforts had been unsuccessful (Exhibit 2B).

On March 20, 2009, Nicholas L. Abbott replied to Jennifer C. Black via email with the explanation that Rahul Shah had been in the hospital and had passed away on March 19, 2009 (Exhibit 2C).

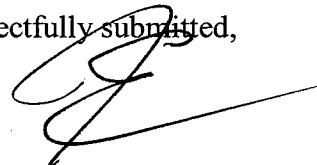
As mentioned in the accompanying Response to the Advisory Action, Applicants understand that Exhibit 1 can be entered in its current form. Applicants respectfully request its entry.

Please charge any fees or credit overpayment to Deposit Account No. 50-0310 of the undersigned.

CONCLUSION

If a telephone conference would expedite consideration of this matter, the Examiner is invited to telephone the undersigned at (415) 442-1000.

Respectfully submitted,



Todd W. Esker, Reg. No. 46,690

MORGAN, LEWIS & BOCKIUS, LLP
One Market, Spear Street Tower
San Francisco, California 94105
Tel. 415-442-1000

EXHIBIT 2A

Black, Jennifer C.

From: Black, Jennifer C.
Sent: Friday, February 27, 2009 9:53 AM
To: 'vkgupta@eng.usf.edu'; 'shahr2@mmm.com'
Cc: 'Stacey Finney'; Esker, Todd W.; SF IP Docketing Local
Subject: UC Case No. 98-207-5 / Our Ref. 061818-5002-US04 Declaration for your signature attached
Attachments: 061818-5002-US04 Declaration.pdf

Importance: High

Filed: -1
NRTID: !nrtdms:0:!session:MCW2:!database:DB2:!document:21023524,1:

VIA EMAIL

vkgupta@eng.usf.edu
shahr2@mmm.com
slfinney@ucdavis.edu

Dear Drs. Gupta and Shah,

Regarding: U.S. Patent Application No. 10/044,899

filed January 9, 2002

Entitled: *Optical Amplification of Molecular interactions Using Liquid Crystals*

UC Case No. 98-207-5

Our Ref. 061818-5002-US04

Before the above-referenced patent application can proceed to allowance, the United States Patent and Trademark Office has requested that we file a new Declaration which will have the effect of removing your 1998 *Science* article from consideration as prior art. You have signed, and we have filed this Declaration for two previous applications in this family, U.S. Patent Application No. 09/127,382, now U.S. Patent No. 6,284,197 and U.S. Patent Application No. 09/898,132, now U.S. Patent No. 6,852,285.

Please sign and date the attached updated Declaration, and return to my attention, via facsimile or email, before Tuesday, March 10, 2009.

Thank you, and please contact us with any questions.

Kind regards,
Jennifer Black for Todd W. Esker, Esq.

Jennifer C. Black
Paralegal
Morgan, Lewis & Bockius LLP
One Market, Spear Street Tower | San Francisco, CA 94105-1126
Direct: 415.442.1622 | Main: 415.442.1000 | Fax: 415.442.1001
jblack@morganlewis.com | www.morganlewis.com

CERTIFICATE OF ELECTRONIC TRANSMISSION

I hereby certify that this correspondence, including listed enclosures is being electronically transmitted in Portable Document Format (PDF) through EFS-Web via Hyper Text Transfer Protocol to the United States Patent and Trademark Office's Patent Electronic Business Center on:

Dated: _____

Signed: _____

PATENT

Attorney Docket No.: 061818-5002-US04

Client Ref. No.: 98-207-5

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

NICHOLAS L. ABBOTT, et al.

Application No.: 10/044,899

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For: OPTICAL AMPLIFICATION OF
MOLECULAR INTERACTIONS USING
LIQUID CRYSTALS

Customer No.: 43850

Confirmation No.: 3817

Examiner: Lundgren, Jeffrey S.

Technology Center/Art Unit: 1639

DECLARATION OF NICHOLAS L.
ABBOTT, JUSTIN J. SKAIFE, VINAY K.
GUPTA, TIMOTHY B. DUBROVSKY
AND RAHUL SHAH

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

(1) We, Nicholas L. Abbott, Justin J. Skaife, Vinay K. Gupta, Timothy B. Dubrovsky and Rahul Shah declare as follows:

(2) That we are the named and true inventors in the above-referenced patent application and that we are co-inventors of the subject matter disclosed and claimed in said application, and the only inventors thereof.

(3) We understand that the Examiner rejected claims 144, 145 and 148-154 of the application under 35 U.S.C. § 102(a) as anticipated by Gupta *et al.* (1998). We understand "Gupta *et al.*" to refer to an article entitled "Optical Amplification of Ligand-receptor Binding Using Liquid Crystals," *Science* 279:2077 (1998). We make this declaration to present facts

showing that Gupta *et al.* is the disclosure of persons named as inventors of the above-captioned application, and not the disclosure of others.

(4) That we, Nicholas L. Abbott, Justin J. Skaife, Vinay K. Gupta, and Timothy B. Dubrovsky are co-authors of the article entitled "Optical Amplification of Ligand-Receptor Binding Using Liquid Crystals," *Science* 279:2077 (1998).

(5) That the above-referenced application discloses subject matter in addition to the subject matter disclosed in Gupta *et al.*

(6) That the contribution of Rahul Shah to the present invention, resides in material that is not disclosed in Gupta *et al.* and that Rahul Shah did make an inventive contribution to the subject matter disclosed and claimed in the above-referenced application and, thus, he is a co-inventor of said subject matter.

(7) We further declare that all statements made herein of our own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under §1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Dated: _____

Nicholas L. Abbott

Dated: _____

Justin J. Skaife

Dated: _____

Vinay K. Gupta

Dated: _____

Timothy B. Dubrovsky

Dated: _____

Rahul Shah

MORGAN, LEWIS & BOCKIUS LLP

One Market, Spear Street Tower
San Francisco, California 94105
Tel: 415-442-1000
Fax: 415-442-1001

DB2/21017362.I

EXHIBIT 2B

Black, Jennifer C.

From: Black, Jennifer C.
Sent: Wednesday, March 18, 2009 3:50 PM
To: 'Nicholas L. Abbott'
Cc: SF IP Docketing Local; Esker, Todd W.; 'Stacey Finney'
Subject: RE: UC Case No. 98-207-5 / Our Ref. 061818-5002-US04 Declaration for signature attached

Filed: -1
NRTID: !nrtdms:0:!session:MCW2:!database:DB2:!document:21044898,1:

Dear Dr. Abbott,

Thank you very much for returning the executed Declaration. We now have everyone's signature EXCEPT Rahul Shah. I have tried emailing and calling him several times, and I have not heard back from him. He is at 3M Corporation as you said; however, he has not returned my calls I have left on his voicemail and the operator at 3M can only connect me directly to his voicemail (i.e. I haven't been able to talk to anyone else at 3M specifically regarding Dr. Shah).

If you have any other suggestions for contacting him at 3M, or would be able to contact him on our behalf, please let me know. It would be most appreciated. In the meantime, I will continue with my efforts. Again, thank you for returning your signed Declaration to us.

Kind regards,
Jennifer

Jennifer C. Black
Paralegal
Morgan, Lewis & Bockius LLP
One Market, Spear Street Tower | San Francisco, CA 94105-1126
Direct: 415.442.1622 | Main: 415.442.1000 | Fax: 415.442.1001
jblack@morganlewis.com | www.morganlewis.com

From: Nicholas L. Abbott [mailto:abbott@engr.wisc.edu]
Sent: Wednesday, March 18, 2009 3:29 PM
To: Black, Jennifer C.
Cc: SF IP Docketing Local
Subject: RE: UC Case No. 98-207-5 / Our Ref. 061818-5002-US04 Declaration for signature attached

Jennifer - I apologize for the slow response, Enclosed please find the signed declaration. Regards - Nick Abbott

At 12:10 PM 3/11/2009, Black, Jennifer C. wrote:

Dear Dr. Abbott,

Just a reminder that we need the attached Declaration signed and returned via facsimile or email. Thank you very much.

Kind regards,
Jennifer Black

Jennifer C. Black

Paralegal

Morgan, Lewis & Bockius LLP

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Direct: 415.442.1622 | Main: 415.442.1000 | Fax: 415.442.1001

jblack@morganlewis.com | www.morganlewis.com

From: Black, Jennifer C.

Sent: Friday, February 27, 2009 9:37 AM

To: 'Nicholas L. Abbott'

Subject: RE: UC Case No. 98-207-5 / Our Ref. 061818-5002-US04 Declaration for signature attached

That's great! Thank you so much for your help. Have a good weekend.

Kind regards,

Jennifer

Jennifer C. Black

Paralegal

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Direct: 415.442.1622 | Main: 415.442.1000 | Fax: 415.442.1001

jblack@morganlewis.com | www.morganlewis.com

From: Nicholas L. Abbott [<mailto:abbott@engr.wisc.edu>]

Sent: Thursday, February 26, 2009 10:59 PM

To: Black, Jennifer C.

Subject: Re: UC Case No. 98-207-5 / Our Ref. 061818-5002-US04 Declaration for signature attached

Hello Jenifer - I can respond via fax before March 10. Vinay Gupta is at U of South Florida (contact info below is correct). Rahul Shah is a 3M, in St Paul MN. Rahul's email is shahr2@mmm.com. I'll copy Rahul on this note as a heads-up. Regards - Nick Abbott

At 02:30 AM 2/27/2009, you wrote:

VIA EMAIL

abbott@engr.wisc.edu

jskaife@wlgore.com

tim_dubrovsky@bd.com

slfinney@ucdavis.edu

Dear Drs. Abbott, Skaife, and Dubrovsky:

Regarding: U.S. Patent Application No. 10/044,899

filed January 9, 2002

Entitled: *Optical Amplification of Molecular interactions Using Liquid Crystals*

UC Case No. 98-207-5

Our Ref. 061818-5002-US04

Before the above-referenced patent application can proceed to allowance, the United States Patent and Trademark Office has requested that we file a new Declaration which will have the effect of removing your

1998 *Science* article from consideration as prior art. You have signed, and we have filed this Declaration for two previous applications in this family, U.S. Patent Application No. 09/127,382, now U.S. Patent No. 6,284,197 and U.S. Patent Application No. 09/898,132, now U.S. Patent No. 6,852,285.

Please sign and date the attached updated Declaration, and return to my attention, via facsimile or email, before Tuesday, March 10, 2009.

We also need the signatures of Dr. Vinay K. Gupta and Dr. Rahul R. Shah; however, our latest contact information for both of these inventors is from 2000. Can you confirm the most recent contact information of either Dr. Gupta or Dr. Shah? The latest information found for Dr. Gupta is as follows (from 2004):

Vinay K. Gupta, Associate Professor
Department of Chemical & Biomedical Engineering
4202 East Fowler Avenue, ENB 118
University of South Florida
Tampa, FL 33620
EMAIL: vkgupta@eng.usf.edu

If you can confirm whether or not Dr. Gupta is still at this address, or where we might be able to find Dr. Shah, it would be most appreciated.

Thank you, and please contact us with any questions.

Kind regards,
Jennifer Black for Todd W. Esker, Esq.

Jennifer C. Black
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notify us immediately by e-mail and delete the

EXHIBIT 2C

Black, Jennifer C.

From: Nicholas L. Abbott [abbott@engr.wisc.edu]
Sent: Friday, March 20, 2009 2:16 PM
To: Black, Jennifer C.
Subject: RE: UC Case No. 98-207-5 / Our Ref. 061818-5002-US04 Declaration for signature attached

Jennifer - I have rather sad news regarding Rahul Shah. He passed away early Thursday morning of this week. He had been in hospital for the past couple of week - hence lack of response..... Sincerely - - Nick Abbott

At 05:49 PM 3/18/2009, you wrote:

Dear Dr. Abbott,

Thank you very much for returning the executed Declaration. We now have everyone's signature EXCEPT Rahul Shah. I have tried emailing and calling him several times, and I have not heard back from him. He is at 3M Corporation as you said; however, he has not returned my calls I have left on his voicemail and the operator at 3M can only connect me directly to his voicemail (i.e. I haven't been able to talk to anyone else at 3M specifically regarding Dr. Shah).

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Jennifer C. Black

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Jennifer C. Black

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Subject: RE: UC Case No. 98-207-5 / Our Ref. 061818-5002-US04 Declaration for signature attached

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Subject: Re: UC Case No. 98-207-5 / Our Ref. 061818-5002-US04 Declaration for signature attached

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VIA EMAIL

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jskaife@wlgore.com

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Vinay K. Gupta, Associate Professor
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EMAIL: vkgupta@eng.usf.edu

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use of the recipient(s) named above. This message may

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